IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6019 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHAVIK JAYANTILAL RAJGOR

Versus

ASSTT.GENERAL MANAGER

Appearance:

1. Special Civil Application No. 6019 of 2003

MR NAVALDAN R LANGA for Petitioner No. 1

MR SANDEEP N BHATT for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 22/09/2004

ORAL JUDGEMENT

In this petition, the petitioner is seeking compassionate appointment for himself on the basis of death of his father who was employed by the respondent-Bank and died in harness. It is the case of the petitioner that the family of the deceased-employee of the Bank is in destitute condition and that therefore the respondents should have granted the request of the petitioner for compassionate appointment.

2. It is not in dispute that the father of the petitioner expired on 11.10.99 while in service of the respondent Bank. The petitioner, therefore, applied to the respondents for being granted compassionate appointment. The request of the petitioner was, however, rejected by the respondents by communication dated 30th October 2001. In the said communication, it was noted that the competent authority has decided the proposal for appointment on compassionate ground, but the same is declined as resources available to the family of the deceased are adequate for sustenance.

3. The respondents have produced a copy scheme formulated by the Bank for considering the requests for compassionate appointment. In the said scheme circulated on 28th February 1997, it is provided that the appointments are to be made strictly on the basis of open invitation and merit. However, as an exception, dependents of employees dying in harness and leaving their family in penury can be considered. The Scheme also lays down the important criteria for determining the eligibility for compassionate appointment and provides that the following factors should be taken into account.

(a) Family Pension
(b) Gratuity amount received
(c) Employee's/Employer's contribution to Provident Fund
(d) Any compensation paid by the Bank or its Welfare Fund
(e) Proceeds of LIC policies and other investments of the deceased employee
(f) Income for family from other sources
(g) Income of other family members from employment or otherwise
(h) Size of the family and liabilities, if any.

The respondents along with the reply have also produced the detailed consideration of the case of the petitioner by the competent authority. The Bank had also considered the size of the family which included, the widow of the

deceased employee, two sons and one unmarried daughter. After taking into account the amounts received by the family, by way of gratuity, PF and other dues from the respondents and also taking into account the liabilities of the family, it was found that the family would have a surplus of Rs.2.41 lacs which would earn interest. It was also noted that the family is in receipt of family pension of Rs.2,966/- per month. The respondent also took into account the income of the petitioner which was stated to be Rs.800 per month. The respondent, therefore, found that the family would be receiving a monthly amount of Rs.6175/- and therefore, the competent authority found that the family is not in destitute condition. The case of the petitioner for compassionate appointment was, therefore, rejected.

4. It is by now well settled that the public employment has to be given by open invitation and on merit and compassionate appointment is an exception to the general rule of Article 14 an 16 of the Constitution of India of equality in public employment [See State of Haryana v. Rani Devi & Anr. (JT 1996 (6) SCC 646)]. The same view is also taken by the Hon'ble Supreme Curt in Umesh Kumar Nagpal v. State of Haryana & ors. (1994 (4) SCC 138).

5. Since the respondents have formulated scheme for compassionate appointment, the case of the petitioner can be considered only within the parameters of the scheme. The Hon'ble Supreme Court in a recent decision in Punjab Natonal Bank v. Ashvini Kumar Taneja, 2004 (7) SCALE 16 has after considering several decisions of the Supreme Court on compassionate appointment observed that retiral benefits received by the heirs of the deceased employee have to be taken into consideration while dealing with the prayer for compassionate appointment. In the present case also, these are some of the relevant factors to be considered for deciding the condition of the family seeking compassionate appointment as per the scheme of the Bank. In that view of the matter, the respondents did not commit any error in taking into account the benefits received by the family upon the death of the employee. The respondents having considered all relevant aspects of the matter has come to the conclusion that the case is not fit for granting compassionate appointment. In this view of the matter, it is not a fit case where interference is called for by this Court in exercise of powers under Article 226 of the Constitution of India.

6. In the result, the petition fails and is hereby rejected. Rule is discharged with no order as to costs.

(Akil Kureshi, J.)

(vjn)